



REAL ESTATE TRANSFER NEWS  
AUGUST 1989

This newsletter shall address questions asked the Bureau of Utility & Special Taxes since the issuance of our last letter of January 1989. Also, the recently passed Budget Bill caused several statutory changes discussed in question 1.

The following questions and answers are given as general interpretations of the Wisconsin Administrative Code and Statutes.

1. What changes were recently enacted regarding the real estate transfer program?
  - The definition of a conveyance was clarified regarding leases. Leases of 99 years or greater are included as a conveyance subject to a return and fee. Please see question 27, Real Estate News, June 1988.
  - The definition of "real estate" was added to the statutes. It states that it includes "fixtures; roots, vines and trees of perennial crops; stock in a cooperative building; improvements on leased land; timber; and minerals."
  - With respect to a sheriff sale [sec. 846.16(1), Stats.] the sheriff or referee shall deduct the fee if due from the proceeds of this sale and deposit the fee and transfer return with the clerk of court. The clerk of court will transmit the transfer fee and return to the register of deeds.
2. Is our local Chamber of Commerce an instrumentality of the city they represent for purposes of Exemption 2?

No!
3. Are leases of real property for less than 99 years which could be extended to 99 years or more considered a conveyance for real estate transfer fee purposes?

No!
4. Are both the filing of a transfer return and payment of a fee under Chapter 77 of the Wisconsin Statutes required where property is dedicated to a municipality for streets and parklands? Also, if these conveyances were by certified survey map or by subdivision plat map rather than by deed, would the answer be the same?

The answer is yes to both questions.

Where the plat and certified survey maps are recorded as described in secs. 236.29 and 236.34(1)(e), Stat., a conveyance of an interest in real property has occurred as contemplated in sec. 77.21(1), Stats. A real estate transfer form and fee are required to be filed and paid. Exemption 12 [sec. 77.25(12), Stats.] would not be applicable.

The fee is to be based upon the fair market value of the lands dedicated. The value of this land could be estimated based on a pro rata portion of the total area covered by the recorded map.

5. When a court awards property to the Department of Transportation, County, or State, because of condemnation proceedings and a deed to that property is not executed, the agency files with the appropriate register of deeds an "Award of Damages." Should a real estate transfer return be filed with that award?

Yes, it is the Department's position that since the "Award of Damages" may be the only filing evidencing the passage of the ownership interest of the property [sec. 77.21(1), Stats.], a transfer return must be filed. If the "Award of Damages" is followed up with a deed, a photocopy of the first return could than be filed.

6. Is a transfer to a trustee for purposes of Exemption 16 [sec. 77.25(16), Stats.] the same as a transfer to a trust? This was done to withhold from the public the name and terms of the trust.

Yes, a trustee is by definition "holding in trust title to or holding in trust a power over property" [sec. 701.01(8), Stats.]. Also, "...The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power...." [sec. 701.19(11), Stats.].

7. Are both a return and fee due when a mother deeds her life estate to her daughter? She previously reserved the life estate when deeding the remainder interest to her daughter several years ago.

Yes, a return is due but Exemption 8 [sec. 77.25(8), Stats.] may be claimed if the daughter did not purchase the life estate. If a gift, the value of the life estate must be shown on the return. It may be computed by using the "Present Worth of a Life Interest" table used for inheritance and estate taxes purposes.

8. A land contract was entered into with the State prior to the change to Exemption 2 [sec. 77.25(2), Stats.] which caused a fee to be due on conveyances to governments. Is a deed in satisfaction of this land contract now subject to the fee?

No!

9. Is it now acceptable when an individual is recording a deed that lists, for example, ten lots with five different addresses, to accept only one transfer return?

Yes, the rule-of-thumb has always been "one deed, one return." It would be the responsibility of the appraiser to allocate the sale price between the various lots. In all probability, the sales contract in your case lists one price for ten lots. Perhaps the "rule-of-thumb" should read one return per transaction.

10. On Section V, Line 17, of the transfer fee return [PE 500 (R5-89)], must the lot size legally have to be indicated?

Yes, line a and b must be completed. Please see "Register of Deeds Criteria for a Completed Real Estate Transfer Return [PE-500 R5-89];" a copy is attached for your convenience.

11. A "Condominium Deed" (form 17) omits the location of the condominium from the legal (reference to City, Village, etc.). Is it necessary to have the information on each legal description (we've been placing it on the document if it's been omitted)?

This question should more appropriately be referred to your County Corporation's counsel.

12. Will the Wisconsin Department of Revenue ever be including a list of the organizations that are exempt from the payment of transfer fee when placed in a grantor's position?

Yes, please see questions 5 of the June 1988 and 4 of the January 1989 "Real Estate Transfer Fee News" letters. If you have other grantors that may be exempt [sec. 77.25(2), Stats.], please submit them to us for a determination of their status.

13. Please explain the difference in treatment of sheriff's sales caused by foreclosures for county delinquent taxes and for mortgage defaults.

If a sheriff's sale is for recovery of county's delinquent taxes and the successful bidder is a third party, the sale is exempt from the fee according to Exemption 4 [sec. 77.25(4), Stats.]. However, if the sheriff's sale is caused by a bank foreclosure and the successful bidder is a third party, the sale is taxable. This last mentioned sale is not exempt because of Exemptions 4 or 14 [secs. 77.25(4) or (14), Stats.].

14. The following was done for income tax purpose (a three party transaction) to achieve a tax free exchange and/or cost basis step-up:

- ° A sells parcel I to B,
- ° C sells on a land contract parcel II to B, and

- ° B assigns the vendees interest in the land contract from C to B for parcel II to A.

What are the transfer fee consequences?

There are three taxable events. However, the fee is deferred on the original land contract from C to B until such time as a deed is filed in satisfaction of that land contract.

15. A partnership distributes some of its real estate to one of its four partners. This distribution does not change the partners' ownership interest in any way. That is, they each own 25% of the partnership before and after the distribution. The partners are spouses and lineal ascendants or descendants of each other. Is this conveyance of property from the partnership to the partner exempt by reason 15 [sec. 77.25(15), Stats]?

No, Exemption 15 requires that the partner's ownership interest be exchanged for the conveyed (distributed) real estate.

## REGISTER OF DEEDS

### Criteria for a Completed Real Estate Transfer Return (PE-500 R. 5-89)

#### Introduction

All information on the return is useful to either the local assessor, other municipal and county officials and staff of the Department of Revenue who have a statutory responsibility in the administration of Wisconsin property tax laws. Section 77.22(1) of the Wisconsin Statutes provides that "...submission of a completed real estate transfer return and collection by the register of the fee shall be prerequisites to acceptance of the conveyance for recording." Since the refusal to record an instrument which conveys an interest in real estate is a matter of considerable consequence to the parties concerned, the Department of Revenue has designed guidelines which will assist you in making a judgment as to when a particular return is incomplete to warrant rejection of the underlying conveyance.

*In General.* Any part of the form which provides a space for an answer to a question is incomplete if that space is left blank. Except for the following situations:

- (A) Where there are multiple options and not all apply.
- (B) Where a blank will be construed to mean negative (no) or zero (0).

Number in parenthesis refers to line numbers on the return.

#### PART I - GRANTOR

- (1) **Name** – Must have name(s) on the return as shown on the conveyance. In the event of multiple grantors, this space is not incomplete if it contains the notation "et al" in lieu of the names which do not fit in the space provided on the form.
- (2) **Address** – Must be completed and "Not Available" is unacceptable. Complete with new address of grantor if property sold was former residence.
- (3) One box must be checked describing grantor.

#### PART II - GRANTEE

- (4) **Name** – Same requirements as under Grantor (1) Name.
- (5) **Address** – Must be completed. This part of the form is incomplete if left blank. Since it is usually the grantee or the grantee's agent who submits the form it should not prove to be a hardship or inconvenience to supply this information.
- (6) **Grantor/Related** – One box must be checked. If yes is checked, relationship must be shown.
- (7) **Name and Address to Which Tax Bills Should be Sent** – This part of the form is complete if left blank; however, it is generally in the grantee's interest to supply this information since it will assist the treasurer in giving timely notice of the amount of the property tax due. It will also assist assessors in giving notice of assessment change thereby enabling grantee to object at Board of Review.

#### PART III - ENERGY

- (8) One box must be checked. If **YES**, attach appropriate DILHR Transfer Authorization form (Cert. of Compliance, Stipulation or Waiver). For more information, see Chapter ILHR67, Wis. Adm. Code (s. 67.03 and 67.04) If **NO**, enter the appropriate exclusion code found on the back of the transfer form. The use of exclusion code W-11 requires an attached written explanation for use by DILHR.

#### PART IV - PROPERTY TRANSFERRED

- (9) **City, Village, Town, County** – This part of the form is incomplete if appropriate box is not checked and spaces are left blank.
- (10-14) **Legal Description** – Is complete if all of the applicable questions are answered and four copies of the legal description are attached where space provided on the form is not sufficient. Is complete if space behind Property Tax Parcel Number contains the notation "Not Available." (If the property is transferred as it appeared on the Tax Roll of the prior year, the parcel number is always shown on the tax bill or on other property tax correspondence from the local/county treasurer, or assessor.) This number assists in the positive identification of the property in a number of situations such as a lengthy and complicated legal description.

## PART V - PHYSICAL DESCRIPTION AND INTENDED USE

(15) **Kind of Property** - One box must be checked. If OTHER, should be explained.

(16) **Primary Use** - One box must be checked.

If "a." *Residential* is checked, one box must be checked describing type of residence and if multi-family is checked number of units must be completed.

If "b." *Commercial* is checked, describe type of business use. Is complete if not described.

If "d." *Agricultural* is checked, adjoining lands YES or NO box must be checked. (Adjoining land is defined as property transferred being within 3 miles of property currently owned by grantee.)

(17) **Land Area and Type**

(a) or (b) is complete if either are filled in as actual or estimated.

(c) *MFL / FC / WTL* - Is complete if left blank. A blank will imply zero acres.

(d) *Ft. of Water Frontage* - Is complete if left blank. A blank will imply zero feet.

## PART VI - TRANSFER

(18) **Type of Transfer** - One box must be checked. If OTHER, should be explained.

(19) **Ownership Interest Transferred** - Is complete if either FULL or OTHER is checked. If OTHER, should be explained.

(20) **Retained Rights** - Is complete if none of the boxes are checked. A blank will imply no rights retained.

(21) **Satisfaction of Land Contract** - If box is checked, date of original land contract must be entered.

(22) **Points (Prepaid Interest)** - Is complete if left blank. A blank will imply zero.

(23) **Value of Personal Property** - Is complete is left blank. A blank will imply zero.

(24) **Value of Tax Exempt Property** - Is complete is left blank. A blank will imply zero.

## PART VII - COMPUTATION OF FEE OR STATEMENT OF EXEMPTION

(25) **Total Value** - Must be entered, except where the transfer exemption number is entered on line 27 and exemption number is 1-7, 9-16. Note: exemption number 8 and Original Land Contract **must** have value and if Original Land Contract, box on line 27 must be checked.

(26) **Fee** - Must be entered unless the transfer is exempt from the fee by s 77.25 or by Original Land Contract.

(27) **Transfer Exemption Number** - Must be entered when no fee is due because the transfer is claimed to be exempt from the fee by s. 77.25 or by Original Land Contract. Check box if Original Land Contract. Exemptions are listed on back of return.

(28) **Grantee's Financing** - One box must be checked. If box (a) seller or (b) assumed existing financing and agricultural property (line 16d) is checked, PART VIII must be completed.

## PART VIII - FINANCING TERMS

If line 16d is checked agricultural property and if line 28 - Grantee's Financing is checked (a) seller financed or (b) assumed existing financing, then PART VIII lines 29 thru 37 **must** be completed. It is requested that the financial terms be disclosed for all other sales where seller or assumed financing are checked. A recent court decision directs all assessment officials to adjust comparable sales to reflect only their true cash equivalent values for the development of real estate property assessments.

## PART IX - CERTIFICATION

Must be signed by both Grantor and Grantee or agent. If signed by Grantor's agent, agent must print name, address and telephone number.

**Social Security Numbers** - Grantors' and Grantees' social security numbers must be entered. If corporation or partnership the Federal Employer's Identification Number (FEIN) must be entered.